

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 16-0166 FMO (RAOx)	Date	July 21, 2016
Title	LFP IP, LLC v. Lee Keith Brett, <u>et al.</u>		

Present: The Honorable	Fernando M. Olguin, United States District Judge
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Julieta Lozano	None	None
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorney Present for Plaintiff(s):

Attorney Present for Defendant(s):

None Present

None Present

Proceedings: (In Chambers) Order Re: Pending Motion

On June 27, 2016, plaintiff filed a Motion to Dismiss Counterclaims Pursuant to FRCP 12(b)(6) and Strike Affirmative Defenses Pursuant to FRCP 12(f) ("Motion"). The Motion was set for oral argument on July 28, 2016. The July 28, 2016, hearing date required defendant to file his Opposition to the Motion no later than July 7, 2016. See Local Rule 7-9. Plaintiff did not file any opposition to plaintiff's Motion. Accordingly, the court will vacate the hearing date and grant plaintiff's Motion. See Local Rule 7-12.

Many motions to dismiss can be avoided if the parties confer in good faith (as required by Local Rule 7-3), especially for perceived defects in a complaint, answer or counterclaim that could be corrected by amendment. See Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1052 (9th Cir. 2003) (where a motion to dismiss is granted, a district court should provide leave to amend unless it is clear that the complaint could not be saved by any amendment). Moreover, a party has the right to amend the complaint "once as a matter of course[.]" Fed. R. Civ. P. 15(a)(1). Given the policy favoring amendment of complaints, the court will grant plaintiff's Motion and dismiss defendant's counterclaims (and affirmative defenses) with leave to amend. In preparing the First Amended Answer, defendant shall carefully evaluate the contentions set forth in plaintiff's Motion. The court expects that plaintiff will agree to any amendment(s) that will cure the alleged defect(s).

Based on the foregoing, IT IS ORDERED THAT:

1. The hearing set for July 28, 2016, is hereby **vacated**.
2. Plaintiff's Motion to Dismiss Counterclaims Pursuant to FRCP 12(b)(6) and Strike Affirmative Defenses Pursuant to FRCP 12(f) (**Document No. 18**) is **granted**.
3. Defendant's counterclaims and affirmative defenses are dismissed and stricken with **leave to amend**.
4. If defendant still wishes to pursue his counterclaims and affirmative defenses, he is

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granted until **August 3, 2016**, to file a First Amended Answer attempting to cure, to the extent he believes is warranted by existing law, the alleged defects outlined in plaintiff's Motion.

5. Defendant is cautioned that failure to timely file a First Amended Answer may result in his counterclaims and affirmative defenses being dismissed without prejudice or stricken for failure to prosecute and/or failure to comply with a court order. See Fed. R. Civ. P. 41(b); Link v. Wabash R.R. Co., 370 U.S. 626, 629-30, 82 S.Ct. 1386, 1388 (1962).

6. Plaintiff shall file its Answer and Reply to the First Amended Answer or a motion pursuant to Fed. R. Civ. P. 12 with respect to the counterclaims and affirmative defenses no later than **August 24, 2016**.

7. In the event plaintiff wishes to file another motion to dismiss or strike, then counsel for the parties shall, on **August 17, 2016, at 10:00 a.m.**¹ meet and confer to discuss plaintiff's motion. Plaintiff's motion must include copies of all meet and confer letters as well as a declaration that sets forth, in detail, the entire meet and confer process (i.e., when and where it took place, how long it lasted and the position of each attorney with respect to each disputed issue that will be the subject of the motion). Failure to include such a declaration will result in the motion being denied.

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 Initials of Preparer jloz

¹ Counsel may agree to meet and confer at another time and place without seeking court approval for such an agreement.